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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204681
Party	Plaintiff Entrepreneur Media, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application No. 85,079,659  
For the mark NETREPRENEUR  
Filing date: July 7, 2010  
Published: December 13, 2011

ENTREPRENEUR MEDIA, INC.,

Opposer,

v.

ALIBABA GROUP HOLDING LIMITED,

Applicant.

Opposition No. 91204681

**ENTREPRENEUR MEDIA, INC.'S REPLY TO  
ALIBABA'S OPPOSITION TO MOTION TO STRIKE**

Pursuant to TBMP 506 and 502.02(b), Opposer Entrepreneur Media, Inc. ("EMI" or "Opposer") submits the following Reply to the Alibaba's Opposition to Opposer's Motion to Strike.

**I. ARGUMENT**

Applicant Alibaba Group Holding Ltd. ("Alibaba" or "Applicant") does not deny that the allegations in its counterclaims are redundant. Nor does Alibaba provide a plausible explanation as to why a 44-page counterclaim with 336 paragraphs of allegations was necessary. Contrary to Alibaba's argument, the nine registrations cited by EMI in no way require Alibaba to respond with 44 pages of redundant and irrelevant material. It is apparent that the only purpose behind such excess is to harass EMI, drive up the costs of this proceeding, and lay the groundwork for punitively broad discovery.

Alibaba's claim that its allegations are relevant is not based on any legal standard or argument, but instead is premised on the idea that a word can be somehow inherently generic with respect to any trademark use, and that unspecified goods and services not claimed in the registration are relevant to a cancellation proceeding. As discussed in Opposer's Motion to Strike, and as further discussed below, this stance is not supported by statutory authority or case law.

The repetitiveness of the allegations makes it unnecessary to address each one individually, contrary to Applicant's argument. And though Alibaba chides EMI for not providing separate reasons to strike each of the hundreds of redundant allegations, Alibaba itself addresses the allegations in only the most general terms. Contrary to Alibaba's vague justifications, Allegations 2-16 do not relate to any legal basis for cancellation, as they merely point out, in an oblique manner, that "entrepreneur" is a word in the English language. There is no need to state the obvious, much less repeatedly. *See* 2 McCarthy on Trademarks and Unfair Competition § 12:1 (4th ed.) ("Thus, it is fallacious to argue that because a designation is a generic name for something, it cannot be a trademark for anything.") Further, the allegation that the ENTREPRENEUR Marks are generic for Opposer's goods and services is already made, ad nauseum, throughout the other 300 plus paragraphs of the counterclaims.

Under the applicable statutes, only the goods and services in a registration are considered when determining if a mark is descriptive or generic. *See* 15 U.S.C. § 1064(3) (describing the grounds for cancellation of a mark as generic as "if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered") (emphasis added); 15 § 1052(e)(1) (stating a mark should not be registered if it is merely descriptive or deceptively misdescriptive when used "on or in connection with the goods of the applicant.")).

Allegations 17-44 are unrelated to cancellation on the grounds of descriptiveness or genericness, because whether EMI claims exclusive rights in goods and services offered to entrepreneurs or entrepreneur-related goods and services generally is immaterial to whether its marks are generic or descriptive for the goods and services claimed in its registrations. Indeed, by distinguishing between “goods offered to entrepreneurs,” “entrepreneur-related goods,” “services offered to entrepreneurs,” and “entrepreneur-related services” for each of EMI’s nine marks, Alibaba reveals its true intent with these allegations, which is to pointlessly lengthen the pleading.

Allegations 54-196 are equally pointless and redundant. These allegations largely consist of many repetitive variations on the statement that EMI claims exclusive rights to the ENTREPRENEUR Marks or NETREPRENEUR in unspecified goods and services. As explained above, the only relevant aspect of these allegations, the goods and services claimed in connection with Opposer’s registrations, is already alleged in paragraphs 45-53. Any nebulous alleged “claim” by EMI to exclusive rights unrelated to EMI’s registrations has no bearing on claims for cancellation before the TTAB.

Paragraphs 201, 211, and 221 are identical, and further are redundant of other allegations. Paragraphs 231, 249, 268, 287, 304, and 323 are also redundant of other allegations. There is no need to restate the same allegation over and over. Redundancy is a recognized ground for a motion to strike. *Order of Sons of Italy in America v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221, 1223 (TTAB 1995) (defense stricken as redundant, that is, as nothing more than a restatement of a denial in the answer and does not add anything to that denial).

In addition to being identical and hence redundant, Paragraphs 240, 258, 295, 313 and 331 (addressing the issue of whether EMI has unspecified “exclusive rights” to use indeterminate

“fanciful terms” derived from the term “entrepreneur”) are clearly unrelated to the issue concerning cancellation of EMI’s registered trademarks, since those marks are not fanciful.

The only case law or statutory authority cited by Alibaba in support of the relevance of its repetitive allegations, namely, *H. Marvin Ginn Corp. v. International Ass’n of Fire Chiefs, Inc.*, 228 U.S.P.Q. 528 (C.A.Fed. 1986), actually supports EMI’s position. In that case, the Federal Circuit reversed a decision by the TTAB, which had cancelled on genericness grounds the trademark FIRE CHIEF, registered for goods described as “a magazine directed to the field of firefighting.” 228 U.S.P.Q. at 529. In that decision, the U.S. Court of Appeals repeatedly made clear that the issue of genericness should only be decided on the basis of the specific “goods of the applicant,” and **not** on the mark as applied to a general class of goods or services (such as Alibaba’s repeated references in Paragraphs 201, 211 and 221, for example, to the term “entrepreneur” as a generic description “for the pursuit of business opportunities”). 228 U.S.P.Q. at 530. In that opinion and underscoring the weakness of Alibaba’s claims overall, the Court in *H. Marvin Ginn* found that it was clear error to hold that FIRE CHIEF as a registered trademark for a magazine directed to firefighters was generic. *Id.* at 532.

## **II. CONCLUSION**

Alibaba has failed to provide any argument as to why hundreds of redundant allegations are necessary, and it has also failed to cite any legal authority which supports the relevance of its immaterial and impertinent claims. EMI will be prejudiced, and this tribunal greatly inconvenienced, by the inclusion of such voluminous irrelevant material. Indeed, allowing these improper allegations to remain will only create further motion practice throughout this proceeding. Accordingly, EMI respectfully requests that the Board grant its motion and strike the offending paragraphs.

Respectfully submitted on August 29, 2012

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document entitled ENTREPRENEUR MEDIA, INC.'S REPLY TO ALIBABA'S OPPOSITION TO MOTION TO STRIKE has been served on Applicant, by placing a true copy thereof enclosed in sealed envelopes with postage thereon fully pre-paid, the United States mail at Irvine, California, addressed as follows:

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I declare, under penalty of perjury, that the foregoing is true and correct, and that this declaration was executed in Washington, D.C., this 29<sup>th</sup> day of August, 2012.

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